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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,108	10/27/2003	Donald J. Stavely	200300193-1	3071

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EXAMINER
HERNANDEZ, NELSON D

ART UNIT	PAPER NUMBER
2622	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Application No.	Applicant(s)
Office Action Summary	10/694,108	STAVELY ET AL.
	Examiner	Art Unit	
	Nelson D. Hernandez	2622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>08 December 2003</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>08 December 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>10/27/2003</u>.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____ .

DETAILED ACTION

Drawings

1.   The drawings were received on December 8, 2003. These drawings are

acceptable.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

3.   **Claim 25** is rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter. As disclosed in the (See page 11, ¶ 51), "In

the context of this specification, a "computer-readable medium" <u>can be any means that</u>

<u>can store, communicate, propagate, or transport the data associated with, used by or in</u>

<u>connection with the instruction execution system, apparatus, and/or device</u>. The

computer-readable medium can be, for example, but not limited to, <u>an electronic,</u>

<u>magnetic, optical, electromagnetic, infrared, or semiconductor system, apparatus,</u>

<u>device, or propagation medium now known or later developed</u>". As disclosed in the

specifications, the "computer-readable medium" is defined as a <u>signal</u> (an electronic,

magnetic, optical, electromagnetic, infrared, or semiconductor system, apparatus,

device, or propagation medium). A signal is not tangibly embodied.

Also, **claim 25** recites "A computer readable medium having a program for

displaying image composition templates with preview images, the program comprising

logic configured to perform the steps of: ...". "A computer readable medium" as claimed

does not define structural and functional interrelationships between the data structure,

the computer software and hardware components, which permit the data structure to be

realized. Since a computer program is merely a set of instructions capable of being

executed by a computer, the program logic itself is not a process; therefore the

invention as claimed is non-statutory. For examining purposes the claim will be read as

"A computer-readable medium having a program for displaying image composition

templates with preview images, the program comprising logic that when executed by an

image capturing device would perform the steps of: ...".

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public
> use or on sale in this country, more than one year prior to the date of application for patent in the United
> States.

5.   **Claims 1, 2-4, 8-14, 17-19 and 21-25 are rejected under 35 U.S.C. 102(b) as**

being anticipated by Mukai et al., US Patent 5,557,358.

        Regarding claim 1, Mukai et al. discloses a system (Figs. 1 and 22), comprising:

at least one image composition template (reference line (see fig. 15C), pattern (see figs.

17A-17C), moving subject pattern (See fig. 19A)) corresponding to a predefined subject

matter; a photosensor (Fig. 22: 40) configured to sense an image; a display (Fig.1: 16

and fig. 22: 32) configured to display a preview image corresponding to the sensed

image; and a processor (Fig. 22: 30) configured to analyze at least one characteristic of the preview image (Col. 6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line 58), determine a nature of the preview image (Col. 6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line 58), and select the image composition template when the nature of the preview image corresponds to the image composition template (Col. 6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line 58; col. 10, line 59 – col. 11, line 28; See also figs. 14, 16 and 18).

Regarding claim 2, Mukai et al. discloses a plurality of image composition templates (reference line (see fig. 15C), pattern (see figs. 17A-17C), each of the image composition templates associated with at least one of a plurality of preview image natures (whether is a line related to the horizon is detected in the image; whether the object is moving, whether the relationship between the size of the subject and the rest of the image is appropriate; col. 6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line 58), a corresponding one of the image composition templates being selected when one of the preview images natures are determined (Col. 6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line 58; col. 10, line 59 – col. 11, line 28; See also figs. 14, 16 and 18).

Regarding claim 3, limitations can be found in claim 2.

Regarding claim 4, Mukai et al. discloses a controller (CPU 30 in conjunction with operation member 42 as shown in fig. 22) configured to select one of the plurality of image composition templates associated with the nature of the preview image (Col. 6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line 58; col. 10, line 59 – col. 11, line 28; See also figs. 14, 16 and 18).

Regarding claim 8, Mukai et al. discloses a viewfinder (Fig. 1: 16), the

viewfinder configured to display a view of the preview image concurrently with the

image composition template (See figs. 15C, 17B and 19A).

Regarding claim 9, limitations can be found in claim 8.

Regarding claim 10, Mukai et al. discloses a method comprising the steps of:

analyzing at least one characteristic of a preview image (Col. 6, line 49 – col. 7, line 62;

col. 8, line 61 – col. 9, line 58); determining a nature of the preview image based upon

the analyzed characteristic (Col. 6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line

58); selecting an image composition template (reference line (see fig. 15C), pattern (see

figs. 17A-17C), moving subject pattern (See fig. 19A)) corresponding to the determined

nature of the preview image (Col. 6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line

58); and displaying (using electronic viewfinder 16 as shown in fig. 1) the selected

image composition template concurrently with the preview image (Col. 6, line 49 – col.

7, line 62; col. 8, line 61 – col. 9, line 58; col. 10, line 59 – col. 11, line 28; See also figs.

14, 16 and 18).

Regarding claim 11, Mukai et al. discloses the step of receiving data

corresponding to the preview image from a photosensor (Fig. 22: 40; col. 10, lines 59-

68; col. 11, lines 32-52).

Regarding claim 12, limitations can be found in claim 8.

Regarding claim 13, limitations can be found in claim 8.

Regarding claim 14, Mukai et al. discloses capturing an image corresponding to

the preview image with an image capture device; and saving captured image data

corresponding to the captured image (Col. 6, line 49 – col. 7, line 62; col. 8, line 61 –

col. 9, line 58; col. 10, line 36 – col. 11, line 28; See also figs. 14, 16 and 18).

Regarding claim 17, limitations can be found in claim 14.

Regarding claim 18, limitations can be found in claim 2.

Regarding claim 19, limitations can be found in claim 2.

Regarding claim 21, Mukai et al. discloses a system (Figs. 1 and 22) for

displaying image composition templates (reference line (see fig. 15C), pattern (see figs.

17A-17C) with preview images, comprising: means (Fig. 22: 31) for displaying a preview

image on a display (Fig. 22: 32); means for analyzing at least one characteristic of the

preview image (Col. 6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line 58); means for

determining a nature of the preview image based upon the analyzed characteristic (Col.

6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line 58); means for selecting an image

composition template corresponding to the determined nature of the preview image

(Col. 6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line 58); and means for displaying

the selected image composition template concurrently with the preview image (Col. 6,

line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line 58; col. 10, line 59 – col. 11, line 28;

See also figs. 14, 16 and 18).

Regarding claim 22, limitations can be found in claim 8.

Regarding claim 23, limitations can be found in claim 8.

Regarding claim 24, Mukai et al. discloses means (Fig. 22: 40; col. 10, lines 59-

68; col. 11, lines 32-52) for capturing an image corresponding to the preview image with

an image capture device; and means for saving captured image data corresponding to

the captured image (Col. 6, line 49 – col. 7, line 62; col. 8, line 61 – col. 9, line 58; col.

10, line 36 – col. 11, line 28; See also figs. 14, 16 and 18).

Regarding claim 25, claim 25 recites a computer-readable medium having a

program for displaying image composition templates with preview images, the program

comprising logic that when executed by an image capturing device would perform the

steps performed by the apparatus in claim 1 and 21. Therefore, grounds for rejecting

claims 1 and 21 apply here.

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

7.   **Claims 5, 7 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable**

over Mukai et al., US Patent 5,557,358 in view of Soga et al., US Patent 6,806,906

B1.

Regarding claim 5, Mukai et al. does not explicitly disclose a menu displayed on

the display, the menu configured to select one of the plurality of image composition

templates associated with the nature of the preview image.

However, Soga et al. teaches a digital camera (See fig. 1) comprising a

composition assist function (See figs. 4-6), wherein a menu (See figs. 4 and 5) is

displayed on the display of the camera (Col. 5, lines 35-56), the menu configured to

select one of the plurality of image composition templates associated with the nature of

the preview image (Col. 4, line 38 – col. 6, line 51; col. 8, lines 4-67).

Therefore, taking the combined teaching of Mukai et al. in view of Soga et al. as

a whole, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify Mukai et al. by having a menu displayed on the display,

the menu configured to select one of the plurality of image composition templates

associated with the nature of the preview image. The motivation to do so would have

been to, while observing the assistance lines being displayed on the display unit, the

user can decide the composition of the subject in such a manner that the subject is

disposed in accordance with the assistance lines and even a beginner, therefore, can

use freely a variety of photographic techniques as suggested by Soga et al. (Col. 1, line

66 – col. 2, line 8).

Regarding claim 7, the combined teaching of Mukai et al. in view of Soga et al.

as applied to claim 5 teaches a memory (Soga et al., fig. 3: 18) configured to store the

image composition template (See Soga et al., col. 5, lines 23-34).

Regarding claim 20, limitations can be found in claim 7.

**8.   Claims 6, 15 and 16 are rejected under 35 U.S.C. 103(a) as being
unpatentable over Mukai et al., US Patent 5,557,358 in view of Windle, US Patent
6,606,117 B1.**

Regarding claim 6, Mukai et al. does not explicitly disclose a memory

configured to store logic configured to analyze the nature of the preview image.

However, having a memory to analyze the nature of image data for composition assist is well known in the art as taught by Windle. Windle teaches an image composition assist system (See fig. 1) comprising a memory (Fig. 1: 103; col. 3, lines 8-24; col. 13, line 65 – col. 14, line 13) for storing image composition program code to analyze and enhance the composition of the image data being captured by a digital camera (Col. 3, lines 8-24; col. 4, lines 39-62; col. 13, line 65 – col. 14, line 13).

Therefore, taking the combined teaching of Mukai et al. in view of Windle as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mukai et al. to have a memory configured to store logic configured to analyze the nature of the preview image. The motivation to do so would have been to improve the performance to the system by having the processor analyzing the image data based on a code that can be changed or updated to improve the performance to the system.

Regarding claim 15, the combined teaching of Mukai et al. in view of Windle as applied to claim 6 teaches saving the selected image composition template as part of the captured image data (See Windle, col. 5, lines 20-49; col. 6, lines 26-58).

Regarding claim 16, the combined teaching of Mukai et al. in view of Windle as applied to claim 6 teaches associating the selected image composition template with the captured image data (See Windle, col. 5, lines 20-49; col. 6, lines 26-58); and saving the selected image composition template (See Windle, col. 5, lines 20-49; col. 6, lines 26-58).
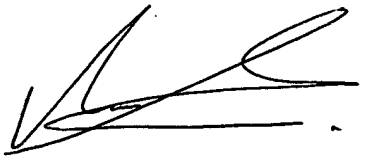
Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nelson D. Hernandez whose telephone number is (571) 272-7311. The examiner can normally be reached on 8:30 A.M. to 6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on (571) 272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nelson D. Hernandez
Examiner
Art Unit 2622

NDHH
March 2, 2007

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